

MINUTES
ENERGY FACILITY SITE EVALUATION
COUNCIL OF WASHINGTON
April 5, 2004 Meeting

925 Plum Street S.E., Building 4, Room 308
Olympia, Washington 98501 1:30 p.m.

ITEM 1: CALL TO ORDER

CHAIR LUCE: The Washington State Energy Facility Site Evaluation Council meeting for Monday, April 5, 2004 will come to order. Clerk, call the roll, please.

ITEM 2: ROLL CALL

EFSEC Council Members

Community, Trade & Economic Development

Department of Fish & Wildlife

Department of Ecology

Department of Natural Resources

Utilities and Transportation Commission

Kittitas County

Chair

Richard Fryhling
(via phone) Chris Towne
Hedia Adelman
Tony Ifie
Tim Sweeney
(via phone) Patti Johnson
Jim Luce

MR. MILLS: And there is a quorum.

OTHERS IN ATTENDANCE

EFSEC STAFF AND COUNSEL

Allen Fiksdal

Mike Mills

Pete Dwell, ALJ – via phone

Irina Makarow

Ann Essko, AAG

Shaun Linse, Court Reporter

EFSEC GUESTS

Bill LaBorde – NW Energy Coalition

Darrel Peeples – Kittitas Valley Wind Project

Mark Anderson – CTED EP

Karen McGaffey – Perkins Coie

Clay White – Kittitas County

Dave Grant, Whatcom County (via phone)

David Reich – Ecology

John Lane – CFE Kittitas Valley Wind
Project

Lauri Vigue – WDFW

Alan Harger, WSDOT

Jim Hurson – Kittitas County

NO. 3: APPROVAL OF MINUTES

CHAIR LUCE: The first order of business is the approval of the minutes from March 1, 2004. Have the Councilmembers had a chance to review the minutes from March 1, 2004?

MS. TOWNE: Yes.

CHAIR LUCE: Are there any corrections or additions?

MS. TOWNE: I have submitted mine electronically to Mariah.

CHAIR LUCE: Were there any substantive corrections or additions?

MS. TOWNE: No.

CHAIR LUCE: Thank you. Do we have a motion to approve the minutes?

MS. TOWNE: So move.

MR. IFIE: I second.

CHAIR LUCE: The motion is seconded and then offered for approval for the minutes of March 1, 2004. All in favor say aye.

COUNCILMEMBERS: Aye.

ITEM NO. 4: ADOPTION OF PROPOSED AGENDA

CHAIR LUCE: Thank you very much. The next matter concerns the adoption of the proposed agenda. Councilmembers have the agenda before them. Are there any changes, additions, or deletions to the proposed agenda?

MS. TOWNE: One information item you may -- well, maybe it's covered under information item WNP-1/4. Will Mike be talking about the mitigation at that point in time?

MR. MILLS: I'll give an update, yes.

MS. TOWNE: Okay. That's fine. Thank you.

CHAIR LUCE: I have one addition myself. Perhaps it was covered under other. I want to have a brief update on an issue which the Council has been advised of by email. I think I sent everyone an email advising them of a declaratory order by FERC asserting exclusive jurisdiction over the construction, operation, and siting of liquefied natural gas terminals importing liquefied natural gas from foreign nations into the U.S. So I would in the interest of having Hedia Adelsman here who has to leave at two o'clock for an important meeting in Walla Walla, I would like to take that item up first unless there's any objection from Councilmembers.

Hearing none we will take that item up first, and with that we have the adoption of the proposed agenda.

ITEM NO. 5: OTHER

<i>Declaratory Order – FERC on LNG Terminals and Imports</i>	<i>Jim Luce, EFSEC Chair</i>
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CHAIR LUCE: I have consulted at the Governor's request with the Department of Ecology and the Washington State Utilities and Transportation Council to determine those departments' interests in asking the State's Attorney General to consider intervening and asking for rehearing or taking such other appropriate action as the State's Attorney General may feel appropriate.

This case was brought under Section 3 of the Natural Gas Act. I am not an expert by any means

on either FERC jurisdiction or Section 3 of the Natural Gas Act. I do believe and I think that the Governor's office believes, I know that the Governor's office believes that having FERC have exclusive jurisdiction over siting LNG plants on the Washington coast with all of the issues that that portends, deep water ports, building terminals, impacts on marine life, impacts on our local communities that those are very significant issues, and the state should have some jurisdictional role other than SEPA. It's up to the State's Attorney General to figure out and determine what that role should be. So after consulting with WUTC and Ecology both of those agencies are supportive of asking the AG to take such action as is appropriate. The opinion was handed down on March 24, and Allen Fiksdal reminded me that 30 days probably means April 23rd. So I am going to send a letter under my own name to Governor Locke this afternoon -- actually a memo. I don't think you send letters to the Governor. You send letters to your relatives, but you send memos to the Governor. I've talked to Chris Gregoire, our Attorney General. She asked me to contact Rob Costello. I had a good conversation with Rob Costello. I believe our own AAG will be preparing the memo for Rob. I've also talked to Oregon's EFSEC. They are very interested in actively participating in some appropriate way, again not determining how their attorney will do this. And I haven't had a chance to contact Cal PUC, but I'm assuming Cal PUC was the party of interest in this declaratory matter. And my guess is that they're going to take some action to go ahead. So that's the sum and the substance of it. You have the opinion. You can read it and reach your own conclusions. Any questions? So I guess I'm just asking for a sense of the Council to go ahead and send the memorandum to Governor Locke, and we'll see what the Attorney General wants to do.

MS. ADELSMAN: I think I would be in agreement to go ahead and do that. We have a strong interest to make sure that the review is done, and if our attorney will get involved in the outcome of whatever the review will be.

CHAIR LUCE: Okay. Thank you very much.

MR. FIKSDAL: I would like to note though we have advised Ann that we don't have any money in EFSEC to pay for this endeavor because it's not part of an application or compliance monitoring.

CHAIR LUCE: We're separating the financial issues on how this is paid for from the policy issues, and the Governor's office will work with the State's Attorney General on the latter. So thank you very much.

ITEM NO. 6: PROJECT UPDATES

CHAIR LUCE: The next item on the agenda is a project update, a variety of project updates, beginning with the Kittitas Valley Wind Power Project. That includes Kittitas Valley and Wild Horse. So, Irina, do you have something for the good of the order?

MS. MAKAROW: Yes, I do. I will direct Councilmembers to the 11 x 17 schedule sheet. Councilmember Towne, I apologize. I did not remember to email this to you, but I will send you one by email as soon as the meeting is over.

MS. TOWNE: Thank you, Irina.

MS. MAKAROW: Patti Johnson, however, I did remember to email you one.

MS. JOHNSON: Yes, I received it.

MS. MAKAROW: Very good. Before we get into the specifics of the projects, one of my goals in pulling together this schedule which includes the three projects under review, as well as some

other project actions that are happening was to, first of all, have a clear listing of anticipated events the Council would be attending and also to see how all the various actions associated with each of the projects will dovetail with each other. As you can see the second half of 2004 is going to be rather busy for the Council with all of these projects happening pretty much at the same time.

MS. ADELSMAN: No vacation from May to September. I took mine, so....

CHAIR LUCE: Is that sort of a taunt?

MR. FRYHLING: Ha-ha-ha.

<i>Kittitas Valley Wind Power Project</i>	<i>Irina Makarow, EFSEC</i>
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MS. MAKAROW: So I can go through the list on the agenda. With regard to the Kittitas Valley Wind Power Project, we have set in order the prehearing schedule would be prefiled testimony from the applicants and the parties and their rebuttals received from May through end of July, and of course, the adjudicative hearings that will be set in the last two weeks of August. What is still open for discussion, however, is the schedule for the post hearing briefs. Right now I just stuck in there now tentatively our traditional two week, two week, two week, -- I'm sorry. One month for the Applicant's post hearing brief, and then two weeks after that for the other parties and the Applicant's final brief. And then six to eight weeks for Council deliberations. So, of course, I mean that is going to get fleshed out as we proceed with the process. I did receive a question from one of the Councilmembers as to how the Final EIS dovetails into this process. First of all, because we anticipate a significant amount of information to come in through the prefiled testimony, EFSEC staff has been discussing with Shapiro what would be the most efficient way to prepare the Final EIS and responses to comments. And because staff feels that there's going to be a lot of information coming in prefiled, if we asked them to write responses to comments now, they might end up rewriting it later once the prefiled is all in. So basically what we're requesting them to do is by the end of April we are going to develop with them a Draft EIS comment response strategy that will at least identify the major gaps in information that we have to collect. And then basically they will wait until all of the prefiled testimony is in at the end of July, and then they will start responding to the Draft EIS comments. So that by the time we get to Council deliberations we'll have an administrative Final EIS for the Council to review and work with in their overall review process. That is it for Kittitas Valley. Are there any questions from the Councilmembers?

MR. IFIE: I have a question. The question I have has to do with the supplemental DEIS that has been done with regard to the known project decision of preemption request by the Applicant. Is that covered? Did you already cover that just now?

MS. MAKAROW: No, that is not included in here, and what Councilmember Tony Ifie is referring to is that the staff, with our Assistant AG, were working towards determining whether a supplemental draft EIS would be required to cover any issues that arise with respect to the request for preemption that has come into the Council. And if that would happen we are going to work very hard to get that document out toward the beginning of May, so that all of the parties are aware of that document as they are preparing their prefiled testimony. And that is in fact a supplemental draft EIS. Then we would either hold a public comment hearing -- well, we have to hold a public comment hearing in the summer, so that would have to be added to the schedule.

MR. IFIE: Okay.

CHAIR LUCE: I had a process question. Kittitas Valley Wind, it looks like we won't have any - well, we are going to be bumping up against them together. Assuming that we get this done by

the middle of December, and I'll make that assumption, we still have the Council deliberations. Do Council deliberations include the writing of the opinion?

MS. MAKAROW: Well, I didn't actually add in what happens after the Council deliberates, and, again, this is still flexible. It's up to the Council to decide what schedule they want to use for all of that. But then basically at the end of the Council deliberations, there would be coordination of issuance of the final EIS. And then issuance of a recommendation, any waiting period before it goes up to the Governor's office, and then sending it up to the Governor's office. So I believe this is open, and I guess it's up to the Council to decide just how much effort they want to put in to keep that process moving before the end of the year or complete it before the end of the year.

CHAIR LUCE: I assume a lot of effort, but I also assume -- well, maybe I'm answering my own question. It doesn't really make any difference who the Governor is. It's just going to be extra effort. Assuming we went ahead and make the recommendation, it will be extra effort working with a new Governor's staff to educate them on the issues potentially.

MS. MAKAROW: Correct.

CHAIR LUCE: That's all. Okay. Strike that question. It was sort of obvious now that I think about it.

MS. MAKAROW: Other than that, the Applicant may also have other issues, and Darrel Peeples is here. Darrel, do you have any comments you would like to make about the schedule?

MR. PEEPLES: I mean just especially if you look at Kittitas Valley and the Wild Horse getting done with one starting the other, I guess I have some concern about the Council and staff and hearings officer trying to bring everything together for Kittitas Valley while we're at that point into Wild Horse. I see some real problems for staff and the Council trying to put those together. And I don't know. Counsel for the Environment might have a comment about having to write a brief on one and then getting ready for the hearing in the other and actually trying it. That's my only comment. The other thing is I will probably be asking for simultaneous briefs. I think that there's one thing I see in here it's like a month and a half for briefing. I guess I would rather just file simultaneous briefs two weeks after the hearing and everybody rolls the dice and puts it out.

MR. FIKSDAL: I think like we've seen with many cases staff puts together a projected schedule and I think with the title very tentative and very subject to change. Lots of things change, and this is our best guess at this time. And I think our realization and I think the Council realizes that things will change. Not might, but I think they will change. But this is just for planning purposes right now.

MR. PEEPLES: And you're also doing BP through that time. That's a horrendous schedule I think for you.

MR. FIKSDAL: I think Irina has done a good job showing us what we're up against and how we need to start coordinating and planning. And if the Applicant and the different intervenors can work to reduce some of the time or adjust some of the time, then it will be even better for all of us. But I think doing prehearing conferences is where the real schedule will get set.

MS. MAKAROW: I will move onto Wild Horse Wind Power Project.

MR. HURSON: This is Jim Hurson. Can I ask a question about the Kittitas Valley Project?

MR. FIKSDAL: Yes.

MR. HURSON: I mean I don't have a copy of any of the schedules you're working on, so I don't know how to comment on the timing. But I was just trying to clarify on the Kittitas Valley Project are we going to have the response to comments to the Draft EIS by the time we do our prefiled?

MS. MAKAROW: No.

MR. HURSON: No.

MS. MAKAROW: And we have one more question from Councilmember Ifie.

MR. IFIE: Yes. I'm still wondering about the nonproject DEIS. When is a projected time for that decision to be made whether or not it's going to be in the DEIS or not?

MS. MAKAROW: We are working on that right now.

MR. IFIE: Do you have a sense of projected time line that decision might be made?

MS. MAKAROW: Probably this week.

MR. IFIE: Thank you.

<i>Wild Horse Wind Power Project</i>	<i>Irina Makarow, EFSEC</i>
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MS. MAKAROW: If there are no other questions, I'll move onto Wild Horse. With respect to Wild Horse Wind Power Project, last week we issued our notice of public meeting scheduled for April 22, which will include the informational public meeting, scoping meeting, as well as the land use hearing. We do expect to get our completeness review from Jones & Stokes in sometime this week. And then just again for the interest -- and the end of the scoping period is the end of the month of April. For the interest of trying to figure out how all of our projects mesh, I kind of laid out a schedule as being proposed by the Applicant in regards to intervention, orders on intervention and prefiled. Basically we would be looking at getting a draft EIS out sometime in the middle of July. And the earliest we could hold hearings would be the last week of September and the first week of October, and that assumes that the Council completes its deliberations and decision making process on BP in a timely manner. If that doesn't happen, then it's very possible that the hearings would get shifted to the beginning of the year because otherwise there would be overlapping with deliberations on Kittitas Valley. As it stands right now, I think BP is the first one to get deliberated followed by Kittitas Valley. Again, this is all very tentative with respect to Wild Horse, but at least it gives you an idea of how things will pan out. Are there any questions about Wild Horse? Hearing none, I will go onto BP Cherry Point.

MR. FIKSDAL: Irina, before you go, can we email this to Mr. Hurson?

MS. MAKAROW: Absolutely. I will get one out as soon as we get out of the meeting.

MR. PEEPLES: My comments before were really more related to Wild Horse than they were to Kittitas Valley just talking about the schedule all together.

<i>BP Cherry Point Project</i>	<i>Irina Makarow, EFSEC</i>
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MS. MAKAROW: Onto BP Cherry point. As you know, the Applicant and Whatcom County have requested the Council postpone this hearing briefing schedule, and they are in the process of still working on their conceptual agreement. And after I complete my review of the schedule, I'll allow David Grant and Karen McGaffey to give us an update as to where they are. The first important item with regards to BP is that you will note on April 15 I have a note that says issue NPDES permit for public comment. In preparing the responses to the comments received on the state waste discharge permit our Ecology contractor has decided that the state waste discharge permit should really be an individual NPDES permit because of the storm water discharges to the wetlands that are associated with the project. And because of this change staff looked at our requirements for noticing of NPDES permits, and because we did not expect this to be an NPDES permit we realize that not all of those requirements were met. So we are going to be issuing a rewritten permit for public comment. We will still have to decide internally if it will be the whole permit that is going to be reissued because it essentially contains 95 percent of the previous permit, or if we will only request comments on those portions of the actual substantive conditions that have changed. But basically the middle of this month that document will go out

for public comment, and we will then probably hold a public meeting three to four weeks later on that document.

MR. FIKSDAL: If I'm correct there's a 30-day comment period? Is that correct?

MS. MAKAROW: Yes, there's a 30-day comment period.

MS. TOWNE: I have a question. Chris Towne. Does the change from state waste discharge permit to an NPDES trigger any additional public rights and responsibilities?

MS. MAKAROW: It may. It certainly triggers responsibilities for EFSEC for notification of EPA Region 10, and I believe also if the Council recommends approval and the Governor approves and an NPDES is issued, it has different rights and responsibilities for the Applicant as well as citizens as a whole.

MS. TOWNE: Question. Why did this pop out now? Why didn't Ecology know that? I believe that the discharge toward the wetlands was known some months ago.

MS. MAKAROW: Correct. In fact, some months ago there were some indications that this might happen; although, at the time Ecology felt that the state waste discharge permit would be appropriate, and it's actually a rather complicated story. When the application for this project first came in, the permit writer who was assigned to this project at Ecology to write the waste water discharge permit conditions unfortunately very soon after the application came in he fell very ill and he passed away. And due to the resources available in their section his supervisor picked up the work. And unfortunately she did not have enough time to coordinate all the policy issues regarding the storm water discharges, and that is why this has only really come up and solidified at this point in time. The other thing that kind of really put her on the trail to resolving the issues is the Applicant themselves actually made a comment to the effect that shouldn't this be an NPDES permit.

MS. TOWNE: Okay. Thank you.

MS. MAKAROW: It's an unfortunate situation; however, a lot of the work has already been performed before by our contractor in responding to the comments. There is not that much substantive work that is required to turn this into an NPDES permit. It is more that than anything else, and I guess the only lucky thing that we have going for us is that in fact because the Applicant and County are working together and resolving their issues we do have the time to do this without having any delay to the rest of the process.

MS. TOWNE: Thank you, Irina.

MS. MAKAROW: With regards to the Final EIS, we've gone through the task order with Shapiro, and we have gotten them started working on responding to the comments on the final EIS, and we expect that an administrative review final EIS would be ready for agency review in mid June. Of course, there are three agencies involved. There's EFSEC, Corps of Engineers, and Bonneville, and we are actually going to allow EFSEC a longer time to review the document, so that it can dovetail with a settlement agreement between the County and the Applicant, if such settlement does occur. Finally, again, because of the way the projects dovetail, because we have the hearings in August, it appears that Council deliberations would only start at the end of August into September. So the month of August would pretty much be taken up by our Administrative Law Judge drafting the Council decision. So that as you get out of the Kittitas Valley hearings, you can get into deliberations on this project right away. And depending on how much time those deliberations take, we could have the decision to the Governor going out at the beginning of October or earlier. Are there any questions?

MS. ADELSMAN: So the agenda that is most certain -- I mean the schedule is actually Cherry Point. We know BP is the one that is almost more known.

MS. MAKAROW: Yes and no. It will depend on what Karen McGaffey and David Grant tell us today and their future reports about how the County and Applicant are working on their settlement.

CHAIR LUCE: That's what I want to hear about.

MS. MAKAROW: So Karen, David.

MS. McGAFFEY: This is Karen. Why don't I start out and David can jump in. I'm happy to say that I think BP and the County have reached a conceptual agreement. I know the County Council has an Executive Committee Meeting tomorrow night, and they've got to sign off on a couple of final details. But from what David tells me at least, I think we're there. The details of that conceptual agreement are confidential, but I can say that as we've discussed before it involves a commitment to do some additional field work based upon agreed protocol. Some of that work actually started last week, I believe, with the idea that the additional work will lead to conditions that BP and the County can jointly propose to be included in the SCA, and that they would resolve all the issues both with respect to the land use consistency and the other issues that the County presented during the adjudication. When we kind of originally talked about target dates, we talked about a target date of mid June for getting you all a final settlement. It I think looks likely that we may be able to do that sooner than that. The field work is underway. We may be coming back to you sooner than that date with final briefs.

CHAIR LUCE: David.

MR. GRANT: I agree with Ms. McGaffey's summary of our situation.

MS. TOWNE: Congratulations. That's a nice piece of work.

MR. GRANT: Thank you.

CHAIR LUCE: I'm a real simple man, so I was going to say sort of on a scale of one to ten, it sounds like we're talking about a nine.

MR. GRANT: Oh, I would go a little higher.

CHAIR LUCE: Good.

MS. ADELSMAN: A 12.

CHAIR LUCE: No, we're not going 12. All right. I'm going to drive home happy tonight.

MR. DEWELL: Jim.

CHAIR LUCE: Yes.

MR. DEWELL: This is Pete Dewell. Could I get an idea of approximately when? It sounds like it will be the middle of June approximately when the counsel wants or the legal counsel thinks it might have something.

MS. McGAFFEY: I'm not sure if we can be precise right now. It depends a little bit on how well the field work went and whether follow-on work needs to be done or not. But as soon as we can get you a better approximation, we would want to give you a heads-up then, and I will do that.

MR. GRANT: Dave Grant speaking. I think as long as the work goes quickly we could have something ironed out earlier than that as well. I agree with Ms. McGaffey.

MR. FIKSDAL: So, Pete, for I guess discussion's sake maybe you could plan on mid May through mid June to be working with us.

MS. McGAFFEY: Unless somebody has some more questions about the settlement, if I could just make one comment about the NPDES permit issue.

MR. FIKSDAL: Go ahead.

MS. McGAFFEY: I appreciate the summary that Irina provided. Needless to say from BP's standpoint we're disappointed about how this played out. This was an issue that we had raised

several times very early on, but the permit writers from Ecology had a different view which they have since changed. But as Irina says the good news is it looks like it probably won't delay the schedule, and I do want to say that BP appreciates both Irina's and the Ecology staff writer's effort to try and move this along quickly at this point. So we are hopeful that it's not going to cause delay anymore in the long run.

MR. FIKSDAL: Us too.

MS. MAKAROW: Are there any other questions about the BP Cherry Point Project and the schedule? Before I pass the torch off to Mike, I will only very briefly again tell you about the other projects. We're expecting a draft PSD permit for the Satsop Combustion Turbine Project to probably be ready for public issuance towards the middle to end of May. We're expecting a Title 5 Air Permit Application for the Chehalis Generation Facility to come in towards the end of May. Tentatively we're expecting an application for extension of the Sumas 2 PSD permits to come in in the middle of July, and then at the very end of the schedule you will see that actually in March of 2005 that is the deadline for the Starbuck Power Project application review schedule that the Council set in Order 774. So something would have to happen with respect to that project early next year. And that is all that I have to report.

CHAIR LUCE: Well, Mike, you're up.

MR. DEWELL: I will sign off.

CHAIR LUCE: Thanks, Pete.

<i>Sumas Energy 2</i>	<i>Mike Mills, EFSEC</i>
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MR. MILLS: For the Sumas Energy project, Karen, I put this on, so that we could hear from the company if you had decided about appealing the Canadian decision.

MS. McGAFFEY: Yes, Mike. On Friday, SE2 filed a motion for leave to appeal the Canadian decision.

CHAIR LUCE: Karen, what's the process now, if you could, not being familiar with Canadian law?

MS. McGAFFEY: As I understand it you have to ask the Federal Court of Appeals in Canada to accept review of the case. You don't have appeal rights. You essentially have to ask them to take the case. If they take the case, then parties brief it on the merits. It's somewhat analogous to asking a court down here to accept service on it.

MS. TOWNE: It's a review on the record, Karen?

MS. McGAFFEY: Yes, it's a review on the record.

CHAIR LUCE: And I read something in the press about also an appeal to the Premier. Is that if the Court of Appeals denies it?

MS. McGAFFEY: I'm not sure I could say anything like that. I'm not sure what references that.

CHAIR LUCE: Okay. All right. All right. Thanks.

<i>Chehalis Generation Facility</i>	<i>Mike Mills, EFSEC</i>
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MR. MILLS: For the Chehalis Generation Facility the plant has been off line for the past month due primarily to market conditions and the price of electricity and energy and gas. Duncan indicated that they were close to starting up a couple times, but they didn't meet the financial targets for that. They do have an 11-day outage planned in early May that will start May 1, and they will be primarily working on warranty work associated with the gas and steam turbines. As Irina indicated they are working on their Title 5 air operating permit application. We expect that in the month of May to be submitted. And associated with their next start-up they are developing a comprehensive noise testing program that they will be able to do testing on site and

at the site boundary and also off site. So they're continuing to work on the noise monitoring issue. I think that concludes the report on Chehalis.

<i>Columbia Generating Station</i>	<i>Mike Mills, EFSEC</i>
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MR. MILLS: For the Columbia Generating Station the plant is operating at 100 percent power, and it's been on line for 277 consecutive days. They've also requested that the Council consider terminating what's referred as to the terrestrial ecological monitoring program that's been in place since 1975. Staff plans to bring this to the Council for action at your next Council meeting, and I've included their request letter in your material today. I will also provide you with the reports that they gave us to summarize the testing results for over the past 20 plus years. So we do plan to bring that request forward. Department of Fish and Wildlife has looked at it, and I believe they support it. And I would submit a written confirmation of that at your next meeting. And I would just note that John Arbuckle has been reassigned within the company, and they have chosen another individual, Mot Hedges, to take John's place as the state liaison, and John will introduce Mot to the Council also at your next meeting.

MR. FIKSDAL: Mike, you said that you're going to bring the monitoring or the ecological program at the next meeting. That's in two weeks, not next month.

MR. MILLS: That would be at the April 19 meeting, yes.

MR. IFIE: This letter refers to three copies of the report summarizing it. Did you say we are going to get that?

MR. MILLS: I'm going to provide Councilmembers with that report this week. We will be having copies made today, so I will get that to all of you this week.

MR. IFIE: Okay.

<i>WNP-1/4</i>	<i>Mike Mills, EFSEC</i>
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MR. MILLS: Next, WNP-1/4. I guess I'd simply indicate that as we've reported before the Department of Fish and Wildlife has the lead in talking with at least one individual property owner in the Benton County area about possibly acquiring a very large piece of shrub steppe habitat acreage. I guess I'd report that Jim talked with Jeff last week, and I think they're hopeful that they will be able to move forward with that acquisition. And I don't know that I can add anymore. They're working on it, and I think the meeting they had went very well. Again, they're hopeful that we could bring that to a satisfactory conclusion. Council also received a letter from the City of Richland and supported by Benton County asking for financial support for a project that I will refer to as the Badger Mountain proposal. We shared that with the Department of Fish and Wildlife and with the Council's committee. Jim's in the process of responding to that. We think this project may have merit because it is located in Benton County, and it appears to have strong local support. So we're going to, Jim's going to respond to that letter, ask for some additional information, and we will bring that back through the committee process that you have set up.

CHAIR LUCE: It's also a fairly large piece of property.

MR. MILLS: Five hundred plus acres.

MS. TOWNE: Mike, FYI. I have done some very minor editing just for clarity on the draft letter, and you will find it in your mail.

MR. MILLS: Thank you, Chris. I don't have anymore on 1 and 4, Jim, unless you have something.

CHAIR LUCE: No. Satsop.

<i>Satsop CT Project</i>	<i>Mike Mills, EFSEC</i>
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MR. MILLS: The Satsop Combustion Turbine Project I'd just remind members that at your next meeting on the 19th we'll bring forward the Duke Energy, Energy Northwest request for technical amendment to consider changes to some of the water use provisions of the site certification agreement. We shared their request and that memorandum of understanding that exists now between Duke, Energy Northwest, Department of Fish and Wildlife, and the Department of Ecology. So we are presently out in the public comment period on that. That will end next Friday, and staff will request that the Council consider the action on that request at your April 19 meeting.

CHAIR LUCE: Great.

ITEM NO. 7: EFSEC RULES

<i>Rules Review Discussion</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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CHAIR LUCE: Allen, EFSEC rules.

MR. FIKSDAL: We have been working on the rules and trying to get them up to the code reviser's standards, so that we can actually submit them to Order Typing Service. They are taking a little bit longer than we anticipated making sure that we've got all the changes made and that the format is consistent with Order Typing Service's requirements. We have been reviewing internally between staff the NPDES permit, changes to the NPDES rules, and I think we are complete. We still need to check with a few people on some of the changes. I feel that we can get all those rules done and into a format by the end of the week, and we will be getting those out to the Councilmembers. We will be posting them on our website and getting them out to Order Typing Service.

CHAIR LUCE: And then from the typing service it goes to the code reviser.

MR. FIKSDAL: Actually they're part of the code reviser. Then once the Order Typing Service gets them back, we check them. It may take a while to get them back from Order Typing Service. It takes a long time to type them up into their system and get them back. Then once we get those back, then I think we can start on our CR 102 process where the Council would look at those, issue a CR 102. That goes out for a 30-day public comment. I think in your handout is a revised schedule that now says we would be issuing a CR 102 about the first week of June.

CHAIR LUCE: Okay.

MR. FIKSDAL: I think we should note here that because of the legislation that passed and the Governor signed that the Council will not be pursuing the CO2 rules that we were, CO2 mitigation rules. Those will go away. And then I think we'll wait for the next item to talk about that. Legislation.

CHAIR LUCE: So where are we? Are we on 11 or 12?

MR. FIKSDAL: On this? Let's see. Where are we? We are on 10 1/2.

CHAIR LUCE: Okay. So we get them back. The Small Business Economic Impact Statement is finished, right?

MR. FIKSDAL: We need to give Dave all of our rules, updated rules, so that he can finalize the Small Business Economic Impact Study.

CHAIR LUCE: We could give them to him now; couldn't we?

MR. FIKSDAL: We could.

MR. REICH: I have the ones from the workshop. Those are the ones I have been working on, but I don't have an update of that. I do need to see those before I can finish.

MR. FIKSDAL: We can give those to you as much as we've gotten so far. Most of the changes are very minor. They're more editorial rather than most of them aren't substantive at all. But, yeah, we can give those to you. Yeah, I think we're far enough along that in the next day or two we will get you a copy.

MR. REICH: Okay.

MR. IFIE: Quick question. Is anything going on with the NPDES process in the rules?

MR. FIKSDAL: Yes. Staff has looked at those. We are just finalizing. In fact, I just finished today, although I do have one or two more questions about a couple aspects of -- or not aspects. I just found out from Hedia this morning that the National Marine Fisheries Service is now called NOAA Fisheries, so we have to change the name in that thing. And there was one other piece that we have to finish on compliance monitoring, and we should have that done by tomorrow or Wednesday. But we will get that out with all the rest of the rules. We want to get them up to Order Typing Service, so they can start doing their work which should take a while. But in the meantime you guys could be looking at it.

CHAIR LUCE: Now under 11 we have hold public meeting or allow for public comment. Is that what you do, put them on the website?

MR. FIKSDAL: Yes. At an earlier date that once we got them sort of in a format that is reasonable, and we think is pretty consistent with OTS or Order Typing Service we should schedule a public meeting, and I have that scheduled for the first meeting in May.

CHAIR LUCE: Okay.

MR. FIKSDAL: So we can put that out this week hopefully and get them on the web. We can put out a notice to our rules that we will be holding a meeting, if that's what the Council wishes to do in conjunction with our regular meeting. It would just be part of the regular meeting that we will have public comment on those rules.

CHAIR LUCE: Okay. Then after that we will go to CR 102.

MR. FIKSDAL: Right.

CHAIR LUCE: So we could go with CR 102. Why wouldn't we be able to go with CR 102 sooner than that?

MR. FIKSDAL: We have to get the copy back from Order Typing Service. That was the delay.

CHAIR LUCE: Okay. I got it.

MR. FIKSDAL: When you issue the 102 it has to go out in the form from Order Typing Service, have that all finalized.

CHAIR LUCE: Okay. That's fine. Then we would be finis no later than 11/20.

MR. FIKSDAL: 11/20 your rules would go into effect.

CHAIR LUCE: We would be finis earlier than that.

MR. FIKSDAL: Yes, you would be finished because you hold your public meeting. You adopt the rules. You have to issue the CR 103, which is your formal adoption of the rules, and then the rules are effective 31 days after.

CHAIR LUCE: So it would be finis 10/20.

MR. FIKSDAL: Yes, or roughly.

CHAIR LUCE: Comment.

MR. IFIE: The sending you were talking about to the typing service, that sounds interesting. You can't send it in a Word document and insert it into their system?

MR. FIKSDAL: It is a Word document, but because the way the code reviser works and Order Typing Service is part of that, the normal changes -- Order Typing Service will print out a double-spaced sheet of your rule, and you insert by hand all the changes. That's the preferred method unless it's more than ten pages. But then you still do a file, but you have to have it in their format essentially. Every time you strike something out, you have to have the strike out bounded by two parentheses and the words struck out. Everything that's added is underlined. The underlined only comes after the strike out, and it's very labor intensive to do it in their format; otherwise, they will send it back and say do it again. Then they put it in to make sure you've done it all right, and then they will issue their normal issuance of what the rule should look like.

CHAIR LUCE: It sounds like you go with their format.

MR. FIKSDAL: Yes, you go with their format.

CHAIR LUCE: It's one of those I fought the law and the law won.

MR. FIKSDAL: Yes. If you had a small little one, you could probably fight, but ours is so large. Every chapter we have changes to a lot of our editorial. A lot are updated. Some are pretty significant. Our Chapter 42 is quite extensively changed.

CHAIR LUCE: Okay. Got it.

MR. FIKSDAL: So we have to make sure that we're right.

MR. IFIE: Thanks for the explanation.

MR. FIKSDAL: Order Typing Service is not really a service. Don't tell them that though.

CHAIR LUCE: That's where Gilbert goes to get his ideas about customer service.

MR. FIKSDAL: They're nice people, but there is certain provisions.

CHAIR LUCE: Legislation.

MS. TOWNE: Wait a minute, related question. Well, it relates both to rules and legislation. We're withdrawing our CO2 rule, but we have before us the task of working with Ecology in constructing rules to implement the newly passed and signed legislation. And since we don't have funding for that, we probably ought to develop a plan to find the funding, so that we can get the rules written.

ITEM NO. 8: LEGISLATION

<i>Update</i>	<i>Allen Fiksdal, EFSEC Manager</i>
CHAIR LUCE: That's actually part of legislation.	
MS. TOWNE: Okay.	
MR. FIKSDAL: This leads very well into our next agenda item. As you almost all probably know the Governor has signed Substitute House Bill 3141, the CO2 legislation bill. In that legislation it says that EFSEC shall not spend any money that the current applicants and certificate holders provide or would provide for any rule making to implement that legislation. So the Council, if it is going to undertake rule making to implement that law, has to find some other funding source. And I will leave it at that.	
CHAIR LUCE: So on April 14, we're going to make a presentation to the Senate Appropriations Committee -- no, actually not the appropriations committee. I'll call it the energy committee, but the Natural Resources Energy Committee, Senator Morton's committee, and we're going to give them an overview basically of how we at EFSEC charge our I'll say fees primarily to applicants and licensees and how we also deal with indirect costs; those that are not necessarily directly	

attributable to applicants and licensees. And Allen has a very fine slide show which he is going to make a presentation on, and then one of the other issues that we're going to raise is exactly this sort of thing such as how do we pay for rules such as CO2 rules? In fact, how do we pay for our presentation in front of you, Senator Morton, because who do we charge that to? Do we charge it to you applicants and licensees? Well, there's no direct benefit for them for us coming up there and talking to the legislators, and they asked us to come. Well, we're going to go. So there are other expenses like that that are indirect, but nevertheless are incurred. So I think that that in turn will lead to the question of what other means of funding are available. Does that help, Chris?

MS. TOWNE: Thank you.

MR. IFIE: Quick comment.

CHAIR LUCE: Yes.

MR. IFIE: I know we are not trying to decide on the issue of funding right now, but I'm just curious. Does EFSEC have the ability to receive gifts from individual --?

MR. FIKSDAL: Agencies?

MR. FRYHLING: DNR ready to come up with some money?

CHAIR LUCE: Charitable contributions are acceptable, yes. You have until April 14 to get your checkbook out.

MR. IFIE: I wasn't talking about myself. I'm talking about our stakeholders that might be interested in helping the process.

CHAIR LUCE: Sure. I see Mr. LaBorde over here from Northwest Energy Coalition.

MR. LaBORDE: We'll just pay for the whole thing.

CHAIR LUCE: The answer is yes. And foundations that's good. Federal grants that's acceptable. We probably will be out beating the bush for those. We've never done that, so it's a skill that we have to learn. But we could learn that skill.

MR. FIKSDAL: If we are going to start or think about starting working on rules to implement that law prior to the next biennium which doesn't start until July 1, '05, -- Is that right, July 1, '05? -- Then we have no funding as of right now. So we would have to get some funds from someplace, somebody, some group, entity, agency. As part of the budget development for the next biennium we will probably be putting in some money for rule making and for other nonattributable activities. And that rule making maybe we don't have any money in the interim. We'll ask for it in the next biennium. But I think it would be advantageous for the Council to start looking now and try to get those rules working with these rules. I've talked briefly with the Department of Ecology about rule making. They were asking us when we are going to start rule making, so I mentioned our dilemma to them and suggested maybe they could start and we could tie into theirs, so it wouldn't be as expensive for us. But some of the major parts of that legislation is for EFSEC to set up a list of qualified organizations, and our rules need to address how that is going to happen. So to implement the law even for Ecology the Council has to do something before they can implement the law. It's going to be important for us to either get some funds, so we can start or try to get funding for the next biennium and then wait.

CHAIR LUCE: There may be some federal funding. I haven't really checked it out. The president has this vision of clean skies or clean air or something like blue skies. I don't know.

MR. PEEPLES: Blue skies.

CHAIR LUCE: Blue skies. Well, maybe there will be some blue skies money out there.

MR. HARGER: No cloud left behind.

CHAIR LUCE: The point is the Department of Ecology has got this initiative and so does EPA to look at it.

MR. FIKSDAL: Maybe we can tie this in.

MR. IFIE: Thank you.

CHAIR LUCE: We will make some phone calls and see what we can scare up.

MR. FIKSDAL: And if you see any money?

MR. IFIE: Is that the case for all Councilmembers?

CHAIR LUCE: DNR.

MR. FIKSDAL: I saw a statement from the Commissioner of Public Lands that talked about the CO2 legislation and how important that might be for state forests, so I think the Commissioner might think it's important for EFSEC to go ahead and implement those rules. Maybe the Commissioner can find some money to help us.

MR. IFIE: That's a good point. There are stakeholders that have interest in it as well. So maybe we could make a list of all the stakeholders that have interest in it.

MR. PEEPLES: That's just for the moneys that come in, right? Moneys that would come in through certification of new plants.

MR. FIKSDAL: The law I can't remember the exact words, but essentially it limits EFSEC's ability to make rules to only those applicants or certificate holders that the law would apply to.

MR. PEEPLES: So it's any new plants from here on in.

MR. FIKSDAL: Right.

CHAIR LUCE: So if we can't find rule making money outside, then it's the first new plants through the door that get to pay everything.

MR. PEEPLES: If there's no new plants, there's no CO2 money.

MR. FIKSDAL: That's correct. The problem is there may be some new facilities that Ecology or the local air authorities may regulate in the interim.

MR. PEEPLES: That's what my question was that if somebody did a 20 megawatt peaker someplace, that would fall under it?

MR. FIKSDAL: That would fall under it, but it's not under our jurisdiction, so we couldn't --

MR. PEEPLES: But would the money come here?

MR. FIKSDAL: No. No. I don't think we could assess the money because they're not under our jurisdiction.

MR. PEEPLES: But are your rules supposed to affect that one?

MR. FIKSDAL: Yes. The law affects that one. Our rules or the law requires EFSEC to set up the independent qualified organizations list, how that goes about and have that list. But having no money we can't develop it.

MR. PEEPLES: Yeah.

CHAIR LUCE: We'll work it out.

MR. LaBORDE: How much do you expect rule making to cost for EFSEC's part of it assuming that you have to do it on your own?

CHAIR LUCE: \$75,000?

MR. FIKSDAL: Between fifty and a hundred thousand.

MR. PEEPLES: You've got that, Bill?

MR. LaBORDE: I'll check with my boss, yeah.

MR. FIKSDAL: It would depend if Ecology did a substantive portion already, then our section on independent qualified organizations may not be that much, and it wouldn't cost as much. We just haven't had the discussions with Ecology. To tell you the truth we just haven't looked at it.

We haven't really thought about it. The legislation has done things, and we just kind of went on vacation with that part. We are focusing now on getting the rules that we have to work on done. CHAIR LUCE: It's IQOs and it's also the carbon trade. I mean you've got to set the carbon market correctly because some of them from what I understand are very credible and some of them are less credible. So I think the criteria for those are going to be quite important. What else you got? We just covered funding.

ITEM NO. 9: EFSEC OPERATIONS

<i>Update</i>	<i>Allen Fiksdal, EFSEC Manager</i>
MR. FIKSDAL: That was the operations update. A lot of that if you recall the schedule that we had developed in April we were going to identify those activities that the Council would not be charging for and/or that are not directly attributable to certificate holders and applicants. And I think part of this we've already covered a little bit last month, and after our -- or I guess our next meeting is the --	
MR. MILLS: 19th.	
MR. FIKSDAL: -- 19th. We can discuss it more because we would have given that presentation to the senate on the 22 nd --	
CHAIR LUCE: On the 14th.	
MR. FIKSDAL: The 14th. Oh, excuse me. That's our trip to Ellensburg. So I will send out the power point to the Councilmembers to show you what we are going to say. There may be a couple slides we may not use. It's essentially the same slide presentation that we had earlier that we showed to you. It's a little more focused, and we've taken out some of the budget information, how we go about our complicated budget. That's all.	
MR. PEEPLES: Will you guys outline the activities that you think fall under and don't fall under to the senate?	
MR. FIKSDAL: Yeah, it does it briefly. Some of the activities, a couple of the activities I think I want to focus on and Jim has written up some of his that we see coming up that may take some time is transmission lines siting. That is an important issue, and LNG as you heard earlier is becoming quite an important issue. And I think it would be good to focus on those two coming issues that we should be involved with that we don't have any funding to be involved with.	
CHAIR LUCE: And it's some of the day-to-day things, keeping the office doors open. I mean there's only so much of the electricity and so much of the machinery and keeping doors open that you can directly attribute to projects.	
MR. FIKSDAL: There's some that can get irritating, but we do suggest things like public requests, for public records request. Is that directly attributable? How do we charge? And we have to do things like that. So we have to charge it. That's not directly attributable. I spent a half-hour on the phone with somebody that's thinking about wind development, solar development, how EFSEC might be involved. That's not directly attributable. How much of my time, Jim's time, any of our time is talking to people outside of EFSEC that have inquiries about how we work, our processes, what we regulate, what we don't? It could be a quarter of an FTE. And how do we bill that? That isn't directly attributable, so there's a big gray zone. And if you are a strict constructionist in looking at the law, none of that is. I should tell the person, "I'm sorry. I can't talk to you because I can't charge for this."	
MR. PEEPLES: They should just give you general funding.	

MR. FIKSDAL: They should. But, again, what happens in the next 18 months before we even possibly can ask for general funds? Let alone if they will give it to us. Getting fund money in these days is pretty difficult.

ITEM NO. 10: OTHER

CHAIR LUCE: Anything else?

MS. MAKAROW: Just a request from staff as vacation plans are made, please notify myself and Mariah, so we can keep track of those for our scheduling of meetings in the next couple of months.

MR. FRYHLING: You just told us we couldn't have vacation until after September.

ITEM NO. 11: ADJOURN

CHAIR LUCE: Going once, twice, adjourned.

(Whereupon the council meeting was adjourned at 2:35 p.m.)